

## Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please make your comments by replying to questions below against proposed changes discussed in the Consultation Paper at the hyperlink: [http://www.hkex.com.hk/consul/paper/cp200907\\_e.pdf](http://www.hkex.com.hk/consul/paper/cp200907_e.pdf).

Where there is insufficient space provided for your comments, please attach additional pages.

### *Consultation Questions on Notice Period for Book Closure*

1. Do you agree to our proposal to shorten the notice period for book closure for a rights issue or an open offer from 14 calendar days to five business days?

Yes (for rights issues)

No (for open offers)

Please provide reasons to support your view.

The Institute considers that the proposal to shorten the notice period for book closure for a rights issue from the existing 14 calendar days to five business days, as the minimum notice period requirement, is acceptable. It will help to reinforce Hong Kong's position as a major international equity fund-raising centre, without unduly disadvantaging retail investors.

In an uncertain economic climate, such as the current environment, where market volatility and significant price fluctuations are not uncommon, shortening the rights issue timetable will facilitate listed companies to raise funds more quickly and minimise the market risks of the parties concerned, including the listed company itself, underwriters, and existing and potential shareholders.

Notwithstanding our support for the proposals in relation to rights issues, we have concerns about applying the same changes to open offers. In the case of rights issues, the rights to subscribe for shares, allotted to shareholders by way of provisional allotment letters, can be traded in the market. As such, if a shareholder is away, for example, and misses the chance to sell his cum-rights securities during the notice period, he will still have another window to sell his subscription rights in the market, if he does not wish to take up the new shares. However, shares under an open offer are allotted on a non-renounceable basis, i.e., the entitlements cannot be separated from the existing shares and therefore shareholders cannot sell the subscription rights. As such, if a shareholder misses the window for selling his cum-entitlement securities during the notice period, he will have to subscribe for the allotted shares or suffer a dilution of his interest without any compensation.

Under the current proposal, for an open offer, shareholders may have only two trading days to sell the shares during the notice period before they go ex-entitlement. This is unlikely to be sufficient in all cases, in particular, where there are a number of parties, e.g., global custodian, fund managers, beneficial owners, etc., involved in the process. We are also concerned that if a large number of shareholders rush to offload their shares during two trading days, given the potentially large volume of transactions, some shareholders could run out of time and be prevented from making a sale.

In view of the above, we consider that additional trading days during the notice period may be required for an open offer.

2. In the case of a rights issue or an open offer, do you agree to our proposal to require extension of the notice period by postponing the book closure date, if necessary, to provide the market with a minimum of two uninterrupted trading days for trading in cum-rights securities during the notice period if, for example, trading on the Exchange is interrupted due to typhoon and/or a black rainstorm warning or trading of the issuer's securities is suspended?

Yes

No

Please provide reasons to support your view.

This will protect shareholders against any further narrowing of the window for trading in cum-rights securities during the notice period.

3. If your answer to question 2 is "Yes", do you agree that the proposed draft rule amendments in Appendix II will implement our proposal(s)?

Yes

No

Please provide reasons to support your view.

4. Do you agree to our proposal to amend the notice period for book closure (in cases other than a rights issue or an open offer) from 14 calendar days to 10 business days?

Yes

No

Please provide reasons to support your view.

The proposal will not reduce the practical length of the notice period and is more specific and certain than the current situation. Currently, public holidays may fall during the notice period and so, in practice, reduce the period available for action to be taken. In addition, specifying the notice period by reference to business days instead of calendar days is broadly in line with other markets, including the United Kingdom ("UK"), Australia and Singapore.

5. Do you agree to our proposal to amend the notice period for alteration of book closure date from six calendar days to five business days?

Yes

No

Please provide reasons to support your view.

See reasons indicated in our response to Question 4 above.

6. Do you agree to our proposal to clarify the rule that if an issuer changes the book closure date, it must give notice at least five business days before the originally announced closure or the newly proposed closure, whichever is earlier?

Yes

No

Please provide reasons to support your views.

7. Are there any other comments you would like to make?

Yes

No

If your answer is “Yes”, please state below.

It is noted that, in respect of rights issues and open offers, in Hong Kong, the companies concerned do not have to calculate the value of the shareholders' entitlements where shareholders do not subscribe for them. As a result, if shareholders do not reply before the deadline that they will subscribe for the rights shares, they receive nothing. The unsubscribed rights will go to the underwriters, or will be allocated by the board to other shareholders under “excess applications”. It is understood that, in similar circumstances, the listing rules in the UK require companies to pay shareholders the value of their unsubscribed rights. This appears to represent a measure of protection for shareholders if they are unaware of a rights issue or open offer, or have missed the exit windows or the deadline for subscription. We would suggest that the Stock Exchange considers studying relevant investor protection measures in place in comparable financial markets, as these may form an important part of the overall framework of rights issues, obligations and protections in those markets, which should be borne in mind when comparisons are being made between particular elements of the framework. The Exchange may wish to consider whether measures that may exist in other markets should be applied in Hong Kong in order to strengthen the investor protection regime here.

*Consultation Questions on Subscription Period*

8. Do you agree to our proposal to amend the minimum subscription period for rights issues and open offers from 14 calendar days to 10 business days?

Yes

No

Please provide reasons to support your view.

The proposal will not reduce the practical length of the notice period. Specifying the subscription period by reference to business days, as opposed to the current situation, will provide greater certainty, in particular when there are public holidays falling during the relevant period.

9. Do you agree to our proposal to amend the maximum subscription period for rights issues and open offers (over which the issuer must consult the Exchange) from 21 calendar days to 15 business days?

Yes

No

Please provide reasons to support your view.

See reasons indicated in our response to Question 8 above.

10. Are there any other comments you would like to make?

Yes

No

If your answer is "Yes", please state below.

- End -